

AMENDED IN SENATE MAY 22, 1997
AMENDED IN SENATE APRIL 22, 1997
AMENDED IN SENATE MARCH 31, 1997

SENATE BILL

No. 461

Introduced by Senator Karnette

February 19, 1997

An act to amend Sections 3057.5, 3059, and 3090 of, and to add Sections ~~3040.1~~, 3060, 3090.1, 3096.6, 3096.7, and 3107.1 to, the Business and Professions Code, relating to optometry, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 461, as amended, Karnette. Optometry: unprofessional conduct.

Existing law provides for the licensure and regulation of optometrists, and provides that certain acts by an optometrist constitute unprofessional conduct. Existing law also provides that all money collected pursuant to these provisions be paid into the Optometry Fund in the State Treasury.

~~This bill would provide that any person who willfully, under circumstances or conditions that cause or create risk of great bodily harm, serious physical or mental illness, or death, practices or attempts to practice optometry, or who advertises as, or holds himself or herself out as, an optometrist without a valid license is guilty of a misdemeanor and upon conviction shall be punished by imprisonment in the county jail for up to one year. By creating a new crime, this bill would impose a state-mandated local program.~~

Existing law requires the board to permit a person who meets certain requirements to take the examination for a certificate of registration as an optometrist.

This bill would also require any person who matriculates in a school of optometry on or after September 1, 1997, to have received instruction in child abuse detection and in the detection of alcoholism and other chemical substance dependency. This bill would also require the board to encourage every optometrist to take courses in pharmacology and pharmaceuticals as a part of continuing education, to consider requiring certain optometrists to take courses in child abuse detection and elder abuse detection, and to develop and disseminate materials regarding child abuse and neglect and elder abuse and neglect.

This bill would authorize a licensee to be ordered to undergo a professional competency examination if the board determines there is reasonable cause to believe the licensee is unable to practice optometry with reasonable skill and safety to patients. It would define the criteria for demonstrating reasonable cause, and would provide that the results of the competency examination are admissible as direct evidence in a disciplinary or interim proceeding against the licensee.

This bill would provide that the following acts, as prescribed, constitute unprofessional conduct: (1) conviction of violating any state or federal statute or regulation regulating dangerous drugs or controlled substances, (2) knowingly making or signing a document relating to optometry that falsely represents facts or (3) altering, modifying, or creating a medical record of any person with fraudulent intent.

The bill would also authorize the State Board of Optometry to impose a civil penalty of \$500 for the altering or modifying of a medical record, or creating a false record, with fraudulent intent. By increasing the source of money for a continuously appropriated fund, this bill would make an appropriation.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~



~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: ~~yes~~ *no*.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 3040.1 is added to the Business~~
2 ~~and Professions Code, to read:~~

3 ~~3040.1. Any person who willfully, under~~
4 ~~circumstances or conditions that cause or create risk of~~
5 ~~great bodily harm, serious physical or mental illness, or~~
6 ~~death, practices or attempts to practice optometry, or~~
7 ~~who advertises as, or holds himself or herself out as, an~~
8 ~~optometrist, without having at the time of so doing a~~
9 ~~valid, unrevoked, and unsuspended certificate as~~
10 ~~provided in this chapter, or without being authorized to~~
11 ~~perform that act pursuant to a certificate obtained in~~
12 ~~accordance with some other provision of law, is guilty of~~
13 ~~a misdemeanor, and upon conviction thereof, shall be~~
14 ~~punished by imprisonment in the county jail for up to one~~
15 ~~year.~~

16 ~~The punishment provided in this section shall not~~
17 ~~preclude any other remedy or punishment provided by~~
18 ~~law.~~

19 ~~SEC. 2.—~~

20 ~~SECTION 1. Section 3057.5 of the Business and~~
21 ~~Professions Code is amended to read:~~

22 ~~3057.5. (a) Notwithstanding any other provision of~~
23 ~~this chapter, the board shall permit a person who meets~~
24 ~~all of the following requirements to take the examination~~
25 ~~for a certificate of registration as an optometrist:~~

26 ~~(1) Is over the age of 18 years.~~

27 ~~(2) Is not subject to denial of a certificate under~~
28 ~~Section 480.~~

29 ~~(3) Has a degree as a doctor of optometry issued by a~~
30 ~~university located outside of the United States.~~

31 ~~(4) Has received instruction in child abuse detection.~~

32 ~~(5) Has received instruction in the detection of~~
33 ~~alcoholism and other chemical substance dependency.~~

(b) Paragraphs (4) and (5) shall apply only to applicants who matriculate in a school of optometry on or after September 1, 1997.

~~SEC. 3.—~~

SEC. 2. Section 3059 of the Business and Professions Code is amended to read:

3059. (a) It is the intent of the Legislature that the public health and safety would be served by requiring all holders of licenses to practice optometry granted under this chapter to continue their education after receiving their licenses. The board shall adopt regulations which require, as a condition to the renewal thereof, that all holders of licenses submit proof satisfactory to the board that they have informed themselves of the developments in the practice of optometry occurring since the original issuance of their licenses by pursuing one or more courses of study satisfactory to the board or by other means deemed equivalent by the board.

(b) The board may, in accordance with the intent of this section, make exceptions from continuing education requirements for reasons of health, military service, or other good cause.

(c) If for good cause compliance cannot be met for the current year, the board may grant exemption of compliance for that year, provided that a plan of future compliance that includes current requirements as well as makeup of previous requirements is approved by the board.

(d) The board may require that proof of compliance with this section be submitted on an annual or biennial basis as determined by the board.

(e) The board may adopt regulations to require licensees to maintain current certification in cardiopulmonary resuscitation. Training required for the granting or renewal of a cardiopulmonary certificate shall not be credited towards the requirements of subdivision (a) or (f).

(f) An optometrist certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 shall complete a total of 50 hours of continuing education every

1 two years in order to renew his or her certificate.
2 Thirty-five of the required 50 hours of continuing
3 education shall be on the diagnosis, treatment, and
4 management of ocular, systemic disease. This subdivision
5 shall become operative only if legislation that requires the
6 renewal of optometrists' licenses every two years is
7 enacted during the 1995-96 Regular Session of the
8 Legislature.

9 (g) An optometrist certified to use therapeutic
10 pharmaceutical agents pursuant to Section 3041.3 shall
11 complete a total of 25 hours of continuing education every
12 year in order to renew his or her certificate. Eighteen of
13 the required 25 hours of continuing education shall be on
14 the diagnosis, treatment, and management of ocular,
15 systemic disease. This subdivision shall become operative
16 only if legislation that requires the renewal of
17 optometrists' licenses every two years is not enacted
18 during the 1995-96 Regular Session of the Legislature.

19 (h) The board shall encourage every optometrist to
20 take a course or courses in pharmacology and
21 pharmaceuticals as part of his or her continuing
22 education.

23 (i) The board shall consider requiring courses in child
24 abuse detection to be taken by those licensees whose
25 practices are such that there is a likelihood of contact with
26 abused or neglected children.

27 (j) The board shall consider requiring courses in elder
28 abuse detection to be taken by those licensees whose
29 practices are such that there is a likelihood of contact with
30 abuse or neglected elder persons.

31 ~~SEC. 4.—~~

32 *SEC. 3.* Section 3060 is added to the Business and
33 Professions Code, to read:

34 3060. The board shall periodically develop and
35 disseminate to all persons licensed to practice optometry
36 information and educational material regarding all of the
37 following:

38 (a) The detection of child abuse and neglect. The
39 board shall consult with the Office of Child Abuse

1 Prevention in developing the materials distributed
2 pursuant to this subdivision.

3 (b) The detection of elder abuse and neglect. The
4 board shall consult with the Adult Protective Services
5 Division of the State Department of Social Services in
6 developing the materials distributed pursuant to this
7 subdivision.

8 ~~SEC. 5.—~~

9 *SEC. 4.* Section 3090 of the Business and Professions
10 Code is amended to read:

11 3090. The certificate of registration of any person
12 registered under this chapter, or any former act relating
13 to the practice of optometry, may be revoked or
14 suspended for a fixed period by the board for any of the
15 following:

16 (a) Violating or attempting to violate, directly or
17 indirectly, or assisting in or abetting the violation of, or
18 conspiring to violate, any provision of this chapter or of
19 the rules and regulations adopted by the board pursuant
20 to this chapter and in accordance with Chapter 3.5
21 (commencing with Section 11340) of Part 1 of Division 3
22 of Title 2 of the Government Code. The proceedings
23 under this article shall be conducted in accordance with
24 Chapter 5 (commencing with Section 11500) of Part 1 of
25 Division 3 of Title 2 of the Government Code, and the
26 board shall have all the powers granted therein.

27 (b) Unprofessional conduct.

28 (c) Gross ignorance.

29 (d) Inefficiency in his or her profession.

30 ~~SEC. 6.—~~

31 *SEC. 5.* Section 3090.1 is added to the Business and
32 Professions Code, to read:

33 3090.1. (a) A licensee may be ordered to undergo a
34 professional competency examination if, after
35 investigation and review by the Board of Optometry,
36 there is reasonable cause to believe that the licensee is
37 unable to practice optometry with reasonable skill and
38 safety to patients. Reasonable cause shall be
39 demonstrated by one or more of the following: (1) a
40 single incident of gross negligence; (2) a pattern of

1 inappropriate prescribing; (3) an act of incompetence or
2 negligence causing death or serious bodily injury; or (4)
3 a pattern of substandard care.

4 (b) The results of a competency examination shall be
5 admissible as direct evidence and may be considered
6 relevant in any subsequent disciplinary or interim
7 proceeding against the licensee taking the examination,
8 and, assuming those results are determined to be
9 relevant, shall be considered together with other relevant
10 evidence in making a final determination.

11 ~~SEC. 7.—~~

12 *SEC. 6.* Section 3096.6 is added to the Business and
13 Professions Code, to read:

14 3096.6. Knowingly making or signing any certificate
15 or other document directly or indirectly related to the
16 practice of optometry that falsely represents the
17 existence or nonexistence of a state of facts constitutes
18 unprofessional conduct. Section 3120 shall not apply to
19 this section.

20 ~~SEC. 8.—~~

21 *SEC. 7.* Section 3096.7 is added to the Business and
22 Professions Code, to read:

23 3096.7. Altering or modifying the medical record of
24 any person, with fraudulent intent, or creating any false
25 medical record, with fraudulent intent, constitutes
26 unprofessional conduct. In addition to any other
27 disciplinary action, the State Board of Optometry may
28 impose a civil penalty of five hundred dollars (\$500) for
29 a violation of this section. Section 3120 shall not apply to
30 this section.

31 ~~SEC. 9.—~~

32 *SEC. 8.* Section 3107.1 is added to the Business and
33 Professions Code, to read:

34 3107.1. The conviction of a charge of violating any
35 federal statutes or regulations or any statute or regulation
36 of this state, regulating dangerous drugs or controlled
37 substances, constitutes unprofessional conduct. The
38 record of the conviction is conclusive evidence of this
39 unprofessional conduct. A plea or verdict of guilty or a

1 conviction following a plea of nolo contendere is deemed
2 to be a conviction within the meaning of this section.

3 ~~SEC. 10. No reimbursement is required by this act~~
4 ~~pursuant to Section 6 of Article XIII B of the California~~
5 ~~Constitution because the only costs that may be incurred~~
6 ~~by a local agency or school district will be incurred~~
7 ~~because this act creates a new crime or infraction,~~
8 ~~eliminates a crime or infraction, or changes the penalty~~
9 ~~for a crime or infraction, within the meaning of Section~~
10 ~~17556 of the Government Code, or changes the definition~~
11 ~~of a crime within the meaning of Section 6 of Article~~
12 ~~XIII B of the California Constitution.~~

13 ~~Notwithstanding Section 17580 of the Government~~
14 ~~Code, unless otherwise specified, the provisions of this act~~
15 ~~shall become operative on the same date that the act~~
16 ~~takes effect pursuant to the California Constitution.~~

